

(2) A transaction described in paragraph (b)(1) of this section shall be exempt from the requirements of the act, including specifically the filing requirement, if the agency whose approval is required finds that approval of such transaction is necessary to prevent the probable failure of one of the institutions involved.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34436, July 29, 1983; 67 FR 11903, Mar. 18, 2002]

#### § 802.9 Acquisition solely for the purpose of investment.

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held.

*Examples:* 1. Suppose that acquiring person "A" acquires 6 percent of the voting securities of issuer X, valued at \$52 million. If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9).

2. After the acquisition in example 1, "A" decides to acquire an additional 7 percent of the voting securities of X. Regardless of "A"'s intentions, the acquisition is not exempt under section 7A(c)(9).

3. After the acquisition in example 1, acquiring person "A" decides to participate in the management of issuer X. Any subsequent acquisitions of X stock by "A" would not be exempt under section 7A(c)(9).

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001]

#### § 802.10 Stock dividends and splits.

The acquisition of voting securities, pursuant to a stock split or pro rata stock dividend, shall be exempt from the requirements of the act under section 7A(c)(10).

#### § 802.20 [Reserved]

#### § 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

(a) An acquisition of voting securities shall be exempt from the requirements of the act if:

(1) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(2) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

*Examples:* 1. Corporation A acquires \$53 million of the voting securities of corporation B and both "A" and "B" file notification as required, indicating the \$50 million threshold. Within five years of the expiration of the original waiting period, "A" acquires additional voting securities of B but not in an amount sufficient to meet or exceed \$100 million or 50 percent of the voting securities of B. No additional notification is required.

2. In Example 1, "A" continues to acquire B's securities. Before "A's" holdings meet or exceed \$100 million or 50 percent of B's outstanding voting securities, "A" and "B" must file notification and wait the prescribed period, regardless of whether the acquisition occurs within five years after the expiration of the earlier waiting period.

3. In Example 2, suppose that "A" and "B" file notification at the \$500 million level and that, within 5 years after expiration of the waiting period, "A" continues to acquire voting securities of B. No further notification is required until "A" plans to make the acquisition that will give it 25 percent of B's voting securities valued at over \$1 billion; or 50 percent ownership of B. (Once "A" holds 50 percent, further acquisitions of voting securities are exempt under Section 7A(c)(3)).

4. This section also allows a person to recross any of the threshold notification levels—\$50 million, \$100 million, \$500 million, 25 percent (if valued over \$1 billion) and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in Example 1, "A" had disposed of some voting securities so that it held less than \$50 million of the voting securities of B, and thereafter had increased its holdings to more than \$50 million but less than \$100 million or 50 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in Examples 2 and 3, "A" could decrease its holdings below, and then

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increase its holdings above, \$50 million and \$500 million, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

(b) *Year 2001 transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may, during the five-year period following expiration of the waiting period, acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in § 801.1(h) of this chapter. However, after the end of that period, any additional acquisition will be the subject of a new notification if it meets or exceeds a 2001 threshold in § 801.1(h) of this chapter.

*Examples:* 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. "A" acquired the 20 percent within the year following expiration of the waiting period. "A" has until October 3, 2004, to acquire additional securities up to 25 percent of "B"'s voting securities, and need not make another filing before doing so, even though such acquisition by "A" may cross the \$50 million, \$100 million or \$500 million notification threshold in § 801.1(h) of this chapter. After October 3, 2004, "A" and "B" must observe the 2001 notification thresholds set forth in § 801.1(h) of this chapter.

2. Prior to February 1, 2001, "A" filed to acquire 12 percent of the voting securities of corporation B, valued at \$120 million, and indicated the \$15 million notification threshold. After February 1, 2001, "A" determines that it will make an additional acquisition which will result in its holding 16 percent of the voting securities of B, valued at \$160 million. "A" is required to file notification at the \$100 million notification threshold prior to making the acquisition since it is now crossing the next higher 1978 threshold (15 percent).

3. Prior to February 1, 2001, "A" filed to acquire 26 percent of the voting securities of "B" and indicated the 25 percent notification threshold. After the end of the five-year period following expiration of the waiting period, "A" will acquire additional shares of "B" which will result in its holding 30 percent of the voting securities of "B", valued at \$125 million. "A" is required to file notification at the \$100 million notification threshold prior to making the acquisition. "A" could, however, have reached this level (30 percent valued at \$125 million) prior to

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the end of the five-year period without making an additional filing since it would not have crossed the next higher threshold at the time it filed (50 percent) and the acquisition would have been exempted by this § 802.21(b).

(c) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001; 67 FR 11906, Mar. 18, 2002]

## § 802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

*Examples:* 1. Assume that corporation A makes a tender offer for 20 percent of the